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JUL 5 1951
CHARLES ELMORE CROP
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 174

JAMES T. HAINES,

Petitioner,

vs.

UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI AND LEAVE TO PROCEED ON TYPEWRITTEN RECORD AND BRIEF IN SUPPORT THEREOF.

MORRIS LAVINE,
Attorney for Appellant.

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PETITION FOR WRIT OF CERTIORARI

To the Honorable Fred M. Vinson, Chief Justice of the Supreme Court of the United States and to the Honorable Associate Justices of the Supreme Court of the United States:

This is a Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit from the judgment convicting appellant of counterfeiting under Section 471, Title 18, U. S. C. A. (Cl. Tr. 2).

The leave to proceed is requested also on the typewritten record here as the appellant did in the United States Court of Appeals, as petitioner is without sufficient funds to pay for the printing of same.

Jurisdiction

Jurisdiction is conferred by Title 28, Section 1251 and Section 12541, and by the Rules of the Supreme Court of the United States in Criminal Cases after verdict.

Opinion Below

The judgment of the United States Court of Appeals for the Ninth Circuit was rendered April 17, 1951 (R. 293) one judge, Albert Lee Stephens, dissenting. A petition for Rehearing was duly filed May 15, 1951 and within the time allowed by law, and denied June 6, 1951, Judge Stephens adhering to his dissenting opinion (R. 311).

The opinion of the United States Court of Appeals is to be found on page 293 of the Record and also at 188 Fed. (2d) 546.

Statutes Involved

Title 18, Section 471, U. S. Codes, which reads as follows:

> "§ 471. *Obligations or securities of United States.*
>
> "Whoever, with intent to defraud, falsely makes, forges, counterfeits, or alters any obligations or other security of the United States, shall be fined not more than $5,000 or imprisoned not more than fifteen years, or both."

Fifth Amendment to the Constitution of the United States, which reads as follows:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against

himself, nor be deprived of life-liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Rule 5, Rules of Criminal Procedure for the District Courts, which reads as follows:

"Rule 5. *Proceedings before the Commissioner.*

"(a) Appearance Before the Commissioner. An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available commissioner or before any other nearby officer empowered to commit persons charged with offenses against the laws of the United States. When a person arrested without a warrant is brought before a commissioner or other officer, a complaint shall be filed forthwith.

"(b) Statement by the Commissioner. The commissioner shall inform the defendant of the complaint against him, of his right to retain counsel and of his right to have a preliminary examination. He shall also inform the defendant that he is not required to make a statement and that any statement made by him may be used against him. The commissioner shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided in these rules."

Statement of the Case

The appellant, James T. Haines, had caused the arrest of one Robert White, who was sentenced to the penitentiary for counterfeiting. White thereafter became a witness against appellant and accused appellant of aiding and abetting White in the counterfeiting activities.

The Government's case is founded on the testimony of White (R. 128) except for certain alleged confessions secured from the defendant after he was taken into custody

and before he was arraigned (R. 80, 105, 106) and (Government's Exhibit 15—R. 106).

It appears that Mr. Carl L. Eliason, a secret service agent, had been previously acquainted with the defendant and within a few minutes after his contact of the defendant, between 9:00 and 10:00 o'clock, he told the defendant he was under arrest and must accompany him to the secret service office.

He then engaged in conversation with the defendant on the way down to the office, at which time he asked the defendant to empty his pockets and caused the defendant to be questioned in the Secret Service offices. He questioned the defendant without taking him down for arraignment, as required by Rule 5 of Rules of Criminal Procedure (R. 90, et seq.).

After Eliason had secured a purported confession from the defendant prior to arraignment, he took the defendant to the office of the United States Attorney, again prior to arraignment and prior to his being represented by counsel or having any friend present (R. 94, 227, 229).

These purported confessions were admitted in evidence against the appellant although the purported confessions were obtained before arraignment and while the defendant was in illegal custody. The Court of Appeals, in a two to one decision, affirmed the judgment of the District Court.

Judge Stephens, in his dissenting opinion, stated:

> "It seems to me, though, that the United States Supreme Court has left no area for discretion to the lower courts in the subject of admitting confessions in evidence which have been given by persons while under police detention and while being intentionally withheld from presentment to a magistrate."

Questions Presented by This Petition

1. Whether the alleged confessions were improperly admitted in evidence in view of Rule 5, Rules of Criminal Pro-

cedure for the District Courts of the United States and the Fifth Amendment to the Constitution of the United States.

2. Whether the evidence is sufficient to justify the verdict in the light of the fact that the evidence is based almost wholly on the testimony of the actual perpetrator of the counterfeiting.

3. Whether the defendant intelligently and competently waived trial by jury.

Reasons for Granting the Writ

The case raises an important question of criminal law about to be decided by this Court in another case in which this court granted certiorari, to-wit: *Carignan* v. *United States*, 185 Fed. (2d) 954, certiorari granted and which will be argued in the next term of court.

The case also involves important questions of criminal law which have not been, but should be, decided by this Court, on the application of Rule 5, Rules of Criminal Procedure for the District Court to the admission and exclusion of confessions obtained prior to arraignment and not before a magistrate.

The case also raises an important question of criminal law on when an accused may have intelligently waived a trial by jury.

WHEREFORE, this petition respectfully prays that this Honorable Court grant certiorari, and further prays that this Honorable Court permit him to proceed on the typewritten record on appeal.

Respectfully submitted,

MORRIS LAVINE,
Attorney for Petitioner.

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Reference is made to the Jurisdictional Statement, the Opinion Below, Statutes Involved and Statement of the Case as contained in the Petition for Writ of Certiorari as though fully set forth herein.

Summary of the Argument

Certiorari should be granted in this case to resolve all doubt regarding the admission or exclusion of a confession secured by officers of the law who fail to obey Rule 5, Rules of Criminal Procedure of the District Courts and take the accused instead to their private office for interrogation.

In *Silverthorne Lumber Company* v. *United States*, 351 U. S. 385, Mr. Justice Holmes said:

> "The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evi-

dence so acquired shall not be used before the court, but that it shall not be used at all."

This court's rulings in *McNabb* v. *United States,* 318 U. S. 332; *Anderson* v. *United States,* 318 U. S. 350; *Malinski* v. *New York,* 324 U. S. 401; *Upshaw* v. *United States,* 335 U. S. 410; *Johnson* v. *United States,* 333 U. S. 10, 14, and *Carignan* v. *United States,* now No. 530, October Term, 1950, are controlling.

In *Johnson* v. *United States,* 333 U. S. 10, 14, the court pointed out that the purposes of arraigning a defendant after his arrest immediately is to afford him the protection of apprising him of his constitutional and statutory rights. Since the detention was illegal the defendant's alleged confession should have been excluded, in the instant case.

II

This case raised the important question not decided by this Court of Whether an Accused Has Intelligently Waived Trial by Jury.

The defendant denied such waiver, which was arranged by his counsel after he had formally demanded a jury trial.

The evidence shows that the defendant gave the psychiatrist who examined him at the instance of the court "the impression of being a rather poorly organized individual who apparently does not plan or think ahead too well. He does not appear to be an essentially vicious person." (Report of Dr. Edwin E. McNiel, Clks. Tr. 18).

III

The case also presents an important question of the sufficiency of the evidence in the light of the fact that the evidence came from the actual perpetrator of the crime, who had been turned in by the appellant, and who in turn was now accused by the perpetrator of the crime as an "aider and abettor."

While the testimony of an accomplice, if believed, is sufficient to sustain a judgment in the Federal Courts, the lower courts have frowned upon sustaining a conviction where the case is based upon the testimony of a principal who simply blames the aider and abettor.

Sykes v. *United States,* 204 Fed. 909;
Dahley v. *United States,* 50 Fed. (2d) 37, 44;
Holmgren v. *United States,* 217 U. S. 509, 523, 524.

WHEREFORE, petitioner prays that this Honorable Court grant certiorari and reverse the judgment below, and also that the petitioner be allowed to proceed on the typewritten record on appeal, pursuant to Rule 39 of the Rules of the District Courts of the United States and Rules and leave of this Honorable Court.

Respectfully submitted,

MORRIS LAVINE,
Attorney for Petitioner.

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